

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of:	)	
	)	
Creation of a Low Power Radio Service	)	MM Docket No. 99-25
	)	
Amendment of Service and Eligibility Rules for	)	MB Docket No. 07-172
FM Broadcast Translator Stations	)	RM-11338

To: The Secretary  
Attn: The Commission

**REPLY OF CONNER MEDIA, INC.  
TO  
PROMETHEUS RADIO PROJECT OPPOSITION TO PETITIONS FOR  
RECONSIDERATION**

Conner Media, Inc. ("Conner"), by its attorney, pursuant to §1.429 of the Commission's rules, hereby respectfully replies to the "Opposition to Petitions for Reconsideration" filed by Prometheus Radio Project on June 15, 2012 which, in turn, opposed Conner's May 9, 2012 "Petition for Partial Reconsideration" ("Petition") of the Commission's March 19, 2012 *Fourth Report and Order and Third Order on Reconsideration*, 27 FCC Rcd 3364 (the "*Order*") in the captioned matter.<sup>1 2</sup>

In its Petition, Conner had challenged the FCC's assumption that there was no need for an applicant to propose multiple translators in a single Arbitron market. Specifically, Conner demonstrated that the sprawling Greenville-New Bern-Jacksonville, NC market, in which it had

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<sup>1</sup> Conner's Petition was acknowledged in a Public Notice, Report No. 2950, released May 17, 2012, which required oppositions to be filed within 15 days of publication in the *Federal Register*, and replies ten days thereafter. *Federal Register* publication occurred on May 31, 2012, 77 FR 32075 and set a date of June 25 for replies.

<sup>2</sup> The Prometheus Opposition was also directed to other petitions for reconsideration of the *Order*. Conner's instant Reply is directed to those portions of the Opposition that specifically addressed points raised in Conner's Petition.

filed multiple applications serving five discrete areas, could not possibly be served by a single facility, and that multiple translators were required to reach its population centers. As an example of the need for multiple translators in a single geographically-large market, Conner had noted the Commission's recent enthusiasm for enabling AM stations to extend their deficient coverage through the use of FM translators. It further questioned how the Commission's rationale of deterring speculation could serve as a meaningful basis for dismissing applicants that had been filed nearly a decade ago in good-faith reliance upon then-operative rules.<sup>3</sup>

In its Opposition, Prometheus claims that it would be premature to expand the use of cross-service translators (Opposition at 5). Yet, in the very *Order* under consideration (at ¶¶ 66-70), the Commission has already acted to do just that, by recognizing the success of its program and expanding the universe of eligible FM translators to include those not only authorized, but for which applications were merely pending, as of the threshold date.

With respect to speculation, Prometheus flatly contends that "although the caps as applied to this window may not deter *attempts* at speculation that have already taken place, they will prevent *actual* speculation [emphases in original]," but provides no clue as to how this is so. Indeed, it further asserts that "the combination of the one-to-a-market rule and the national cap of 50 applications constitute prudent limits designed to preserve diversity in local markets without unreasonably burdening single entities that may reasonably serve a number of local communities nationwide." Thus, by Prometheus's own admission, it sees no policy harm in enabling single entities to serve up to 50 communities nationwide, yet would deny similar benefits to widely-separated communities within a large Arbitron market such as Conner's. There simply is no logical basis for such a distinction. So long as translators within a large market are sufficiently

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<sup>3</sup> In its Petition, Conner asserted, and continues to assert, that the Commission has not presented a viable reason to apply any new rules that would limit the number of applications permitted by a single entity retroactively.

separated so as to serve substantially different areas, then their degree of speculative harm – and the benefits of their proposed service – are no different than with translators in different markets.

Throughout its Opposition, Prometheus loses sight of the proper focus of this proceeding. It is not upon the ability of broadcasters to own multiple translators, albeit serving different areas. Rather, it is upon the need of the public for the benefits of translator service. In that regard, Prometheus's dismissal of the need of AM stations to expand their basic coverage (Opposition, ¶ 8), and for all stations to expand their HD streams (*Id.*, ¶ 10) ignores the primary purpose of translators – to enable population pockets to receive signals from stations that are presumed to be local, but for which, due to various terrain, atmospheric and other physical factors, reception is not currently possible. In its *Order* at ¶ 18, the Commission clearly recognized the essential service that translators provide to efficiently deliver valued programming to listeners. Limiting applicants to a single facility in a market with a multiplicity of areas needing extended service will only thwart that policy goal.

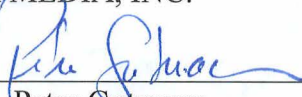
Conner certainly does not wish to unduly foreclose licensing opportunities to LPFM stations, which have the potential to provide complementary, and equally valuable, service. Yet Conner notes that the Commission itself has already demonstrated that in markets such as Greenville-New Bern-Jacksonville there is ample room for both facilities to coexist. Indeed, in that specific market, undoubtedly in part due to its geographic size, the Commission found an opportunity to license up to 30 LPFM stations in up to 56 locations (*Order*, at Appendix A, market 82). Thus, the Commission is not faced with a choice between multiple translators or LPFM outlets, but rather can readily accommodate a multitude of both.

In view of the foregoing and for the reasons stated in its Petition, Conner respectfully submits that the Commission should reconsider its one-to-a-market cap on 2003 window

applications and, if a cap is to be used at all, to apply it on a per-community-of-license, or service-area basis rather than on a per-Arbitron-market basis.

Respectfully Submitted,

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June 25, 2012



### **CERTIFICATE OF SERVICE**

I, Peter Gutmann, an attorney at the law firm of Womble Carlyle Sandridge & Rice, LLP, do hereby certify that a true copy of the foregoing "Reply of Conner Media, Inc. to Prometheus Radio Project Opposition to Petitions for Reconsideration" was mailed, postage prepaid, on this 25<sup>th</sup> day of June, 2012, to the following:

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